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# Human rights and unilateral coercive measures

## Note by the Secretary-General

The Secretary-General has the honour to transmit to the members of the General Assembly the report of the Special Rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights, submitted in accordance with Human Rights Council resolution 27/21.**

* A/70/150.
** Late submission owing to the recent appointment of the Special Rapporteur.

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# Report of the Special Rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights, Idriss Jazairy

*Summary*

The present report sets out a preliminary review of the human rights adversely affected by unilateral coercive measures and puts forward tentative recommendations as to how to minimize the adverse impact of these measures.

The Special Rapporteur wishes to highlight that the present report should be read in conjunction with the report presented to the Human Rights Council (A/HRC/30/45), which provides, among other things, some clarifying definitions concerning unilateral coercive measures and some elements on guidance from international law, human rights law and humanitarian law.

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# I. Introduction

1. The Human Rights Council decided, in its resolution 27/21, to establish a new special procedure, the Special Rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights. The Special Rapporteur was appointed at the twenty-eighth session of the Council and took office in May 2015.

2. The Charter of the United Nations, in its Article 55 (c); the Vienna Declaration, adopted by the World Conference on Human Rights in 1993; and General Assembly resolution 60/251 placed emphasis on the universal character of human rights. The treaty bodies set up under the human rights covenants deal with these rights mainly in the context of their observance by signatory States at the domestic level. It stands to reason, by virtue of their universality, that such rights must also be observed by States at the international level: rights holders are entitled to protection of their basic rights from violations, whether by national or by foreign authorities having an ability to affect them. Only a mechanism based on the Charter of the United Nations could therefore close this protection gap. Hence the establishment of the Special Rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights.

3. The present report is submitted to the General Assembly by the first Special Rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights, Idriss Jazairy, appointed in May 2015 pursuant to Human Rights Council resolution 27/21, in which the Council requested the Special Rapporteur to submit each year a report to the Council and the Assembly on the activities relating to the mandate. In the report, the Special Rapporteur reviews the human rights adversely affected by unilateral coercive measures and formulates tentative recommendations on how to minimize their adverse impact.

# II. Scope of the report

4. The present report and the one submitted to the Human Rights Council[1] were drawn up within two months to comply with the programming imperatives of the General Assembly and Human Rights Council. The present report is therefore preliminary in its approach and recommendations.

5. The remit of the report is to deal with unilateral coercive measures. The concept of unilateral measures is opposed to that of multilateral measures, which in the report is considered as being applicable only to measures adopted by the United Nations itself.

6. The present report covers only unilateral coercive measures, mainly of an economic and financial nature, and looks into their adverse impact on human rights.

7. In 1949-1950, the International Law Commission discussed inconclusively whether economic coercion by States was the equivalent of a resort to the use of force and was therefore unlawful. The issue was later referred to by scholars as "economic warfare" similar to military warfare, indicating that "both kinds of warfare are means towards the same end: political disintegration of the enemy so

[1] A/HRC/30/45.

that he gives up the pursuit of his goals".[2] Others have claimed that "economic sanctions are a species of warfare" and that "they are in a very real sense war — war by other means".[3] Thus, unilateral coercive measures can hardly be described as a peaceful alternative to armed conflict.

8. United Nations sanctions were initially limited to action taken by none other than the Security Council in cases of threat to, or breach of, peace and of acts of aggression. The scope of sanctions was extended to cover the situation of Southern Rhodesia under the unilateral declaration of independence in February 1966 and, a decade later, of apartheid in South Africa, where a United Nations arms embargo was blended with unilateral coercive measures of the European Union and the Commonwealth. Unilateral coercive measures remained few in number, with the United States of America playing a central role as a source/sender State. Following the end of the cold war, the use of such measures rapidly increased, with the involvement of a growing number of advanced countries, in particular, acting as sources/senders. There gradually evolved an agreement among source/sender countries, at least on paper, that unilateral coercive measures should not be used to gain economic advantage, but rather to ensure compliance with international law and in particular with the International Bill of Human Rights.

9. However, in the aftermath of the first Iraq war in 1991, it became painfully clear that comprehensive coercive measures applied by the United Nations as well as unilaterally had become a cause for grave concern. This led to the gradual replacement of comprehensive by "targeted" or "smart" measures, aimed at specific sectors of activity, at entities or at individuals. To this evolution there were three sets of consequences. First, ordinary citizens suffered less from unilateral coercive measures targeted narrowly at particular entities and at individuals. Secondly, the targeting of key commodities such as oil or of financial services was nonetheless having a devastating indirect impact on innocent civilians in different countries. And thirdly, the hasty introduction of designated individuals "of concern" in the list of targets of sanctions and unilateral coercive measures to address imminent security threats after 11 September 2001 resulted in errors triggering violations of the individual rights of people wrongly listed. This led the world leaders at the 2005 World Summit to emphasize "that fair and clear procedures exist for placing individuals and entities in sanctions lists and for removing them, as well as for granting humanitarians exemptions" (see General Assembly resolution 60/1, para. 109). As a result, the United Nations and the European Union, confronted with an increasing number of challenges in European courts,[4] have introduced many reforms. While measures have been adopted in this context to better protect individual rights by enhancing legal due process, little has been achieved to reduce the impact of targeted unilateral coercive measures aimed at the key economic and financial sectors of target countries. Yet these unilateral coercive measures are the ones that affect most cruelly the rights of the largest numbers of innocent civilians.

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[2] Johan Galtung, "On the effects of economic sanctions", *World Politics*, vol. 19, issue 3 (April 1967), p. 388.

[3] John P. Giraudo, "Waging economic warfare: are sanctions power under the Constitution?", *New York University Journal of International Law and Policy* (1987), p. 935.

[4] In a letter dated 21 February 2014 of the Foreign and Commonwealth Office of the United Kingdom of Great Britain and Northern Ireland to the Chair of the House of Lords External Affairs Sub-committee, the number of cases pending before the Court of Justice of the European Union was said to be 110 involving 290 individuals.

## III. Human rights affected by unilateral coercive measures

10. The present section sets out a preliminary review of the various human rights that are the most vulnerable to unilateral coercive measures, and refers to past or current instances of cases in which economic sanctions imposed by the Security Council or unilaterally (by either regional organizations, groups of States or individual States) have actually (or arguably) had an adverse impact on human rights. The multilateral nature of sanctions decided upon by the Security Council does not detract from their likely adverse impact in this regard. It only changes the legal status of such measures and the nature of the remedies that they call for. In terms of impact on human rights, the "transmission mechanisms" are nevertheless the same, hence the inclusion of the impact of some "sanctions" in a report on unilateral coercive measures.

11. In discussing provisions of human rights law in relation to unilateral coercive measures, a series of factors should be borne in mind.

12. First, it is important to recall that the Committee on Economic, Social and Cultural Rights, in its general comment No. 8 on the relationship between economic sanctions and respect for economic, social and cultural rights, declared that the inhabitants of a given country do not forfeit basic economic, social and cultural rights by virtue of any determination that their leaders have violated norms of international peace and security.[5] It has been observed that although this comment seems to apply to sanctions adopted by the Security Council, it applies equally to unilateral coercive measures.[6]

13. Secondly, the relevant rights are enumerated separately in the following subsections mainly, if not only, for conceptual purposes, and their individualization is without prejudice to the close interrelations that exist between the rights concerned. Indeed all human rights are interdependent and indivisible.

14. Thirdly, it is now well established that the effective realization of, and respect for, human rights imply the existence of extraterritorial obligations of States when enacting unilateral coercive measures. In that regard, the Human Rights Committee found that "it would be unconscionable to so interpret the responsibility under article 2 of the Covenant on Civil and Political Rights as to permit a State party to perpetrate violations of the Covenant on the territory of another State, which violations it could not perpetrate on its own territory".[7]

15. On the basis of this assumption, the Committee on Economic, Social and Cultural Rights stressed, in its general comment No. 8, that "just as the international community insists that any targeted State must respect the civil and political rights of its citizens, so too must that State and the international community itself do everything possible to protect at least the core content of the economic, social and cultural rights of the affected peoples of that State".[8]

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[5] See E/C.12/1997/8, para. 16.

[6] See, e.g., the research-based progress report of the Human Rights Council Advisory Committee (A/HRC/28/74), para. 15.

[7] A/36/40, *Sergio Euben Lopez Burgos v. Uruguay*, communication no. R.12/52, para. 12.3. See Takele Soboka Bulto, *The Extraterritorial Application of the Human Right to Water in Africa* (Cambridge, Cambridge University Press, 2014), especially at pp. 168 and 169.

[8] See E/C.12/1997/8, para. 7.

16. Fourthly, this preliminary review does not touch on, and is thus without prejudice to, the issue of the legal status of each and every relevant norm of human rights law, including the question of whether these shall be considered jus cogens, and the legal consequences flowing from such qualification in the relations between States implementing unilateral coercive measures and rights holders. These issues will have to be further dealt with at a later stage in the course of the present mandate.

17. Finally, it is important to recall that the present review, which refers to a number of official documents issued by United Nations organs and human rights bodies, as well as to independent evidence, is necessarily limited and fragmentary and will need to be supplemented, in the course of the present mandate, by further research and evidence arising from all available and relevant data and materials, including country visits and communications received from Governments and other interested stakeholders.

## A. Right to life

18. The right to life is the most basic human right and is enshrined in a number of human rights instruments.[9] It is considered as non-derogable[10] and has been deemed jus cogens.[11] It has been argued that this right is the most likely to be affected by economic sanctions.[12] It is well established that this right not only extends to a protection against the arbitrary deprivation of life, but also encompasses socioeconomic aspects, and incorporates positive obligations on States to take all measures necessary to secure this right.[13] The Human Rights Committee has asserted in that respect that:

> the right to life has been too often narrowly interpreted. The expression 'inherent right to life' cannot properly be understood in a restrictive manner, and the protection of this right requires that States adopt positive measures. In

[9] Universal Declaration of Human Rights, Art. 3; International Covenant on Civil and Political Rights, art. 6(1); Convention on the Rights of the Child, art. 6(1).

[10] See Manfred Nowak, *U.N. Covenant on Civil and Political Rights, CCPR Commentary* (Kehl, N.P. Engel, 2005), pp. 121-122; See further W. Paul Gormley, "The right to life and the rule of non-derogability: peremptory norms of jus cogens", in *The Right to Life in International Law*, B. G. Ramcharan, ed., (Dordrecht, The Netherlands, Martinus Nijhoff Publishers, 1985), pp. 120-159; Yoram Dinstein, "The erga omnes applicability of human rights", *Archiv des Völkerrechts*, vol. 30 (1992), pp. 16-37; Martin Scheinin, "Core rights and obligations", in *The Oxford Handbook of International Human Rights Law*, D. Shelton (ed., (Oxford, Oxford University Press, 2013), pp. 527-540, especially at p. 529.

[11] See the report of the Commission on Human Rights on the protection of human rights in Chile (A/37/564), para. 22 (the right to life is "a fundamental right in any society ... [and] forms part of jus cogens in international human rights law"); see also Manfred Nowak, footnote 10 above, at p. 122; W. Paul Gormley, footnote 9 above, at pp. 120-159.

[12] Erika De Wet, *The Chapter VII Powers of the United Nations Security Council* (Oxford and Portland, Oregon, Hart Publishing, 2004), p. 219.

[13] Sarah Joseph and Melissa Castan, *The International Covenant on Civil and Political Rights: Cases, Materials, and Commentary* (Oxford, Oxford University Press, 2013), p. 203. See also Inter-American Court of Human Rights, *Villagrán Morales and Others versus Guatemala* (case of the "Street Children"), judgment of 19 November 1999, joint concurring opinion of Judges A. A. Cançado Trindade and A. Abreu Burelli, para. 2: "The right to life implies not only the negative obligation not to deprive anyone of life arbitrarily, but also the positive obligation to take all necessary measures to secure that that basic right is not violated".

this connection, the Committee considers that it would be desirable for States parties to take all possible measures to reduce infant mortality and to increase life expectancy, especially in adopting measures to eliminate malnutrition and epidemics.[14]

19. It is also commonly accepted that the right to life operates in an international setting and imposes obligations on States to respect and protect this right to the extent that their actions may affect the right to life of individuals in other jurisdictions.

20. On the basis of these two assumptions, it may be argued that the effective realization of the right to life requires that States implementing unilateral coercive measures refrain from deliberately enacting measures the effect of which would be the deprivation of individuals of food or worse, their subjection to hunger or starvation.[15]

21. Insofar as children are concerned, such obligation to respect and protect the right to life is corroborated by the provisions of the Convention on the Rights of the Child, which recognizes the right to life of every child and calls upon States to ensure, to the maximum extent possible, the survival and development of the child.[16] It also calls upon States to take appropriate measures to diminish infant and child mortality.[17] It has been observed with respect to Security Council sanctions that these "should at the very least not result in denying children access to the basic goods and services essential to sustain life".[18] There is every reason to expect that unilateral coercive measures should comply with the same requirement. This would entail a prohibition on measures leading to increased child malnutrition, infant mortality, or to epidemics among children.

22. Instances of past sanctions regimes entailing actual violations of the right to life include, of course, Iraq in the 1990s, when the country was subject to sanctions mandated by the Security Council.[19]

23. Allegations of violations of the right to life through the imposition of unilateral coercive measures have been made since that time in a number of cases.[20] For example, an increase in malnutrition among children (leading to a number of deaths) and epidemics in the general population resulting from unilateral coercive measures implemented by the occupying power in the Gaza Strip have been documented in various United Nations reports and by non-governmental organizations in recent months.[21]

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[14] See HRI/GEN/1/Rev.1, Human Rights Committee, para. 5 of general comment No. 6 on art. 6 (Right to life) of the International Covenant on Civil and Political Rights.

[15] For an affirmation of such duty in the context of multilateral sanctions enacted by the Security Council, see Erika De Wet, footnote 12 above, at p. 221.

[16] United Nations, *Treaty Series*, vol. 1577, No. 27531, art. 6.

[17] Ibid., art. 24(2).

[18] Erika De Wet, see footnote 12 above, at p. 220.

[19] Commission on Human Rights, "The adverse consequences of economic sanctions on the enjoyment of human rights", working paper prepared by Marc Bossuyt (E/CN.4/Sub.2/2000/33), para. 63. In the same report, the author pointed to the fact that sanctions had a disproportionate adverse impact on children: "In 1999, after conducting the first surveys since 1991 of child and maternal mortality in Iraq, UNICEF concluded that in the heavily populated southern and central parts of the country, children under five are dying at more than twice the rate they were 10 years ago. An expert on the effects of sanctions on civilians states that 'the underlying causes of these excess deaths include contaminated water, lack of high quality foods, inadequate breastfeeding, poor weaning practices, and inadequate supplies in the curative health-care system'" (para. 64).

[20] See A/HRC/28/74.

[21] Ibid., paras. 38 and 39.

## B. Right to self-determination

24. Article 1, paragraph 1, common to the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights recognizes the right of all peoples to self-determination and stresses that "by virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development", while article 1, paragraph 2, of both Covenants provides, among other things, that "in no case may a people be deprived of its own means of subsistence".

25. It has been noted in that respect that the imposition of economic sanctions on a State "may raise special risks of depriving a people of its means of subsistence".[22] The manner in which such risks may materialize in given cases, through interference with the various economic, social and cultural rights, has been highlighted by the Committee on Economic, Social and Cultural Rights in its general comment No. 8.[23]

26. Certainly, in its general comment No. 8, the Committee on Economic, Social and Cultural Rights did not go so far as to suggest that the impact of sanctions might also constitute a violation of the right to self-determination. Nonetheless, as it has been observed, "it is plain that in a given case, universally imposed sanctions regimes, which are insufficiently tailored or targeted and which lack adequate humanitarian exemptions, could have the cumulative effect of depriving a population, or substantial sections of it, of their means of subsistence".[24]

27. Moreover, it seems reasonable to argue that "[u]nilateral economic sanctions (as opposed to multilateral UN measures under Chapter VII of the Charter) imposed by one State on another, to compel that State to change a particular political or economic policy, could amount to a prohibited intervention and a denial of self-determination".[25]

28. Respect of self-determination in that context is germane to the rule precluding economic and political coercion, affirmed, among others, by the General Assembly, in paragraph 123 of its Declaration on Principles of International Law Concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations of 1970) (resolution 2625 (XXV)), that no State may use or encourage the use of economic, political or any other type of measures to coerce another State in order to obtain from it the subordination of the exercise of its sovereign rights and to secure from it advantages of any kind.[26]

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[22] Ben Saul, David Kinley, Jacqueline Mowbray, *The International Covenant on Economic, Social and Cultural Rights: Commentary, Cases, and Materials* (Oxford, Oxford University Press, 2014), p. 117.

[23] See E/C.12/1997/8, para. 3.

[24] Ben Saul, David Kinley, Jacqueline Mowbray, see footnote 22 above, at p. 118.

[25] Ibid., at p. 107.

[26] As to debates surrounding the scope of the prohibition of economic and political coercion, see, e.g., Antonio Tanca, "The prohibition of force in the UN Declaration on Friendly Relations of 1970", in *The Current Legal Regulation of the Use of Force*, Antonio Cassese, ed., (Dordrecht, The Netherlands, Martinus Nijhoff Publishers, 1986), pp. 397-412, especially at pp. 400-402; Pierre Emmanuel Dupont, "Countermeasures and collective security: The case of the EU sanctions against Iran", *Journal of Conflict and Security Law*, vol.17 (2012), pp. 301-336.

29. One specific instance of deprivation of a people's means of subsistence is arguably that of Israel's "general closure" policy in the West Bank, as was found by the Committee on Economic, Social and Cultural Rights in 1998.[27] It is reasonable to assume that coercive measures of this kind qualify as unilateral coercive measures in the meaning of Human Rights Council resolution 27/21, and therefore come within the scope of the present mandate.

30. Moreover, as Israel's "general closures" policy relates to measures taken by an occupying power in an occupied territory, relevant provisions of international humanitarian law may also come into play, including the prohibitions on using starvation as a method of war, the prohibition of destruction of objects indispensable to civilian survival or the prohibition of collective punishment.[28] This was also highlighted by the Human Rights Council with respect to the Israeli blockade of Gaza, which, the Council found, was inflicting disproportionate damage upon the civilian population in the Gaza Strip, and therefore amounted to collective punishment in violation of international humanitarian law.[29]

## C. Right to development

31. The right to development, as embodied in a number of international instruments and recognized in particular in General Assembly resolution 41/128,[30] is especially vulnerable to economic sanctions. The Human Rights Council reaffirmed in 2014 that "unilateral coercive measures are a major obstacle to the implementation of the Declaration on the Right to Development".[31] Indeed, as it has observed,

> The negative consequences [of economic sanctions] in the target country can include loss of jobs, higher consumer prices, economic stagnation, and, in the extreme, impoverishment and ill health. [...] Sanctions can also readily escalate into retaliation and 'trade wars', even drawing in other countries,

[27] See concluding observations on Israel (E/C.12/1/Add.27), para. 39: "The Committee urges the State party to respect the right to self-determination as recognized in article 1 (2) of the Covenant, which provides that 'in no way may a people be deprived of its own means of subsistence'. Closure restricts the movement of people and goods, cutting off access to external markets and to income derived from employment and livelihood. The Committee also calls upon the Government to give full effect to its obligations under the Covenant and, as a matter of the highest priority, to undertake to ensure safe passage at checkpoints for Palestinian medical staff and people seeking treatment, the unhampered flow of essential foodstuffs and supplies, the safe conduct of students and teachers to and from schools, and the reunification of families separated by closures".

[28] Geneva Convention (IV) Relative to the Protection of Civilian Persons in Time of War, 12 August 1949 (United Nations, *Treaty Series*, vol. 75, No. 973).

[29] Report of the international fact-finding mission to investigate violations of international law, including international humanitarian and human rights law, resulting from the Israeli attacks on the flotilla of ships carrying humanitarian assistance (A/HRC/15/21), paras. 53-54. For further references on the blockade of Gaza as a case of collective punishment under international humanitarian law, see, e.g., Shane Darcy, "The prohibition of collective punishment", in *The Geneva Conventions in Context: A Commentary*, Andrew Clapham, Paola Gaeta and Marco Sassòli (eds.), (Oxford, Oxford University Press, forthcoming 2016). Available from http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2482974.

[30] Declaration on the right to development (resolution 41/128, annex).

[31] Human Rights Council resolution 27/21, preamble; see also paras. 1, 4, 6, 10 and 15 of the same resolution.

> leading to further economic difficulties and threats to international stability. As noted, commercial relations with many different countries may be impaired, both in the short and long term. All of this can have damaging effects on the realization of the right to development.[32]

32. The actual adverse consequences of unilateral coercive measures have been comprehensively described in various studies.[33] Referring to the case of Zimbabwe, the United Nations High Commissioner for Human Rights has highlighted the impact of unilateral coercive measures on the country's development, stating that

> there seems little doubt that the existence of the sanctions regimes has, at the very least, acted as a serious disincentive to overseas banks and investors. It is also likely that the stigma of sanctions has limited certain imports and exports. Taken together, these and other unintended side-effects will in turn inevitably have had a negative impact on the economy at large, with possibly quite serious ramifications for the country's poorest and most vulnerable populations.[34]

33. In conclusion, unilateral coercive measures of an economic character are selected to exact as much harm as possible by focusing on vulnerable sectors likely to have the greatest negative multiplier effect on the national economy. Recourse to such measures is therefore antithetic to upholding the right to development.

## D. Right to an adequate standard of living, including food, clothing, housing and medical care

34. The Office of the United Nations High Commissioner for Human Rights has made clear that unilateral coercive measures that impinge on the provision of an adequate standard of living, including medical care, food, clothing and housing, would have an impact on the implementation of article 25, paragraph 1, of the

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[32] Isabella D. Bunn, *The Right to Development and International Economic Law* (Oxford, Hart Publishing, 2012), p. 225.

[33] For Cuba, see, for example, Benjamin Manchak, "Comprehensive economic sanctions, the right to development, and constitutionally impermissible violations of international law", *Boston College Third World Law Journal*, vol. 30 (2010), pp. 417-451, at pp. 433-434. For Myanmar, see Thihan Myo Nyun, "Feeling good or doing good: inefficacy of the U.S. unilateral sanctions against the military Government of Burma/Myanmar", *Washington University Global Studies Law Review*, vol. 7 (2008), pp. 455-518; and for an official statement of the Government of Myanmar referring to sanctions as affecting the right to development, see the address delivered by the Minister for Foreign Affairs, U Nyan Win, to the General Assembly at its sixty-third session, 29 September 2008. Available from www.mofa.gov.mm/speeches.

[34] Opening remarks by the United Nations High Commissioner for Human Rights, Navi Pillay, at a press conference during her mission to Zimbabwe, 25 May 2012. Available from www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=12192&LangID=E#sthash.48RBvc2r.dpuf.

Universal Declaration of Human Rights, and of articles 11 and 12 of the International Covenant on Economic, Social and Cultural Rights.[35]

35. In its general comment No. 12 on the right to adequate food, the Committee on Economic, Social and Cultural Rights stated, with reference to article 11 of the Covenant, that "States parties should refrain at all times from food embargoes or similar measures which endanger conditions for food production and access to food in other countries. Food should never be used as an instrument of political or economic pressure".[36]

36. Actual examples of such adverse impacts of unilateral coercive measures on the enjoyment of the right to an adequate standard of living may be found in various reports and studies. For example, regarding Cuba, the Personal Representative of the High Commissioner for Human Rights stated that "the restrictions imposed by the embargo help to deprive Cuba of vital access to medicines, new scientific and medical technology, food, chemical water treatment and electricity".[37]

37. Mention may also be made here of the right to water, which was recognized by the General Assembly in its resolution 64/292 as a human right that is essential for the full enjoyment of life and all human rights. The Human Rights Council has affirmed that the right to water is derived from the right to an adequate standard of living and inextricably related to the right to the highest attainable standard of physical and mental health, as well as to the right to life and human dignity.[38] The vulnerability of the right to water to unilateral coercive measures of an economic nature has been highlighted by the Committee on Economic, Social and Cultural Rights in its general comment No. 15 on the right to water, in which it called upon States parties to the Covenant to refrain from imposing embargoes or similar measures that prevent the supply of water, as well as the goods and services essential for securing the right to water.[39] This was illustrated by the fact that the Human Rights Committee found in 2010 that the effects of the blockade on the

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[35] See the thematic study of OHCHR on the impact of unilateral coercive measures on the enjoyment of human rights, including recommendations on actions aimed at ending such measures (A/HRC/19/33), para. 35. See also in that respect Anna Segall, "Economic sanctions: legal and policy constraints", *International Review of the Red Cross*, No. 836 (1999), who noted that "it could be argued that the right to food and the right to be free from hunger impose an obligation on States to supply essential foodstuffs to those in need. Even if this argument is not accepted, at the very least the existence of these rights must mean that it is prohibited to deliberately act in a way which actively deprives individuals of food and causes hunger and/or starvation. As far as the imposition of sanctions is concerned, it would seem an extraordinary result if it were prohibited to starve civilians during an armed conflict but permitted in time of peace".

[36] See E/C.12/1999/5, para. 37. For a legal argument for a ban on the use of food and medicine as part of economic sanctions strategies, see Jordan J. Paust, "De-Regulating humanitarian aid: the need for new norms and interpretation", in *International Law between Universalism and Fragmentation: Festschrift in Honour of Gerhard Hafner*, Isabelle Buffard and others, eds., (Leiden, Brill, 2008), pp. 701-709.

[37] See the report on the situation of human rights in Cuba (A/HRC/4/12), para. 7.

[38] Resolution 15/9 on human rights and access to safe drinking water and sanitation, para. 3.

[39] See E/C.12/2002/11, para. 32; see also Salman M.A. Salman and Siobhán McInerney-Lankford, *The Human Right to Water, Legal and Policy Dimensions* (Washington, D.C., The World Bank, 2004), pp. 76-77; and Takele Soboka Bulto, footnote 7 above.

civilian population in the Gaza Strip included, among other things, "restrictions on the access to sufficient drinking water and adequate sanitation".[40]

## E. Right to health

38. The right to health, as recognized in a number of international instruments,[41] is most likely to be affected by unilateral coercive measures. This is also pointed out in a number of resolutions of organs and bodies of the United Nations, including the General Assembly[42] and the Human Rights Council,[43] as well as in reports of United Nations bodies.[44] For instance, in 2000 the Subcommission on Human Rights cited "deteriorating humanitarian conditions in countries which have been affected by heavy sanctions, including embargoes, particularly as evidenced in increasing rates of child malnutrition and mortality and deteriorating health indicators".[45]

39. The actual impact on the enjoyment of the right to health of the decade-long embargo on Iraq has been well documented.[46]

40. The Iraq case refers to sanctions implemented pursuant to Security Council resolutions, therefore not qualifying as unilateral coercive measures. Regardless of their legal status, however, this shows that such measures have a material adverse effect on the right to health of the population of the country targeted. This observation can be related to the statement made by the Committee on Economic, Social and Cultural Rights in its general comment No. 8 that all kinds of economic sanctions, irrespective of the fact that they are imposed "internationally, regionally and unilaterally", should, "whatever the circumstances, [...] always take full account of the provisions of the International Covenant on Economic, Social and Cultural Rights".[47]

41. Beyond the case of Iraq, studies focusing on other countries targeted by unilateral coercive measures point to the same negative effects on the right to

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[40] See the concluding observations of the Human Rights Committee concerning Israel (CCPR/C/ISR/CO/3), para. 8.

[41] Constitution of the World Health Organization, 22 July 1946; Universal Declaration of Human Rights, Art. 25; International Covenant on Economic, Social and Cultural Rights, art. 12.

[42] See, e.g., resolutions 66/156 and 68/162.

[43] See, e.g., resolutions 15/24 and 27/21.

[44] See, e.g., A/HRC/28/74, paras. 14-19.

[45] Subcommission on Human Rights resolution 2000/1 on human rights and humanitarian consequences of sanctions, including embargoes.

[46] For a comprehensive overview and evaluation of the effects of the sanctions on the Iraqi people, see, e.g., the report of the second panel on the humanitarian situation in Iraq (S/1999/356), annex II; E/CN.4/Sub.2/2000/33; World Health Organization Division of Emergency and Humanitarian Action, *The Health Conditions of the Population of Iraq since the Gulf Crisis* (Geneva, World Health Organization, 1996) WHO/EHA/96.1. Available from http://apps.who.int/iris/bitstream/10665/59845/1/WHO_EHA_96.1.pdf?ua=1 (accessed on 2 August 2015).

[47] See E/C.12/1997/8, para. 1.

health, mainly either through the shortage of medical supplies or through damage to the health infrastructure.[48]

42. The Committee on Economic, Social and Cultural Rights, in its general comment No. 8, mentioned that sanctions, here taken to refer to unilateral coercive measures, may "severely interfere with the functioning of basic health [...] systems". More specifically, the same Committee, in its general comment No. 14 on the right to the highest attainable standard of health, urged States parties to the Covenant to "refrain at all times from imposing embargoes or similar measures restricting the supply of another State with adequate medicines and medical equipment. Restrictions on such goods should never be used as an instrument of political and economic pressure".[49]

43. In that context, it is important to recall that the right to health is commonly understood as containing an obligation on States to respect the right to health, which in turn is assumed to impose a legal obligation on States to take reasonable measures to ensure that the consequences of their actions are not harmful to the health of persons in jurisdictions other than their own.[50] In other words, as explained by the Special Rapporteur on the on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, "international assistance and cooperation require that all those [States] in a position to assist should, first, refrain from acts that make it more difficult for the poor to realize their right to health".[51]

44. The precise nature and extent of this obligation to refrain from any action that would be harmful to the health of persons in other jurisdictions are still subject to some controversy.[52] However, it appears reasonable to assume that the obligations of States to respect, at the very least, the "core content" of the right to health extend to a requirement to structure any unilateral coercive measures regime

> in a way that does not undermine the availability and accessibility of basic health facilities, goods and services on a non-discriminatory basis. This presupposes, in particular, that the [unilateral coercive measures] may not undermine the accessibility of minimum essential food which is nutritionally adequate and safe; the accessibility to basic shelter, housing and sanitation, as well as an adequate supply of safe and potable water; the accessibility of

[48] For unilateral coercive measures currently in force, see, e.g., regarding Cuba, document A/HRC/28/74, paras. 24-27; and Amnesty International, *The US Embargo against Cuba and its Impact on Economic and Social Rights* (London, Amnesty International, 2009), especially pp. 16 ff; and for the Islamic Republic of Iran, see document A/HRC/28/74, paras. 34-35. Regarding the Islamic Republic of Iran, reference shall be made to reports according to which 85,000 cancer patients, who require chemotherapy and radiotherapy treatment, "are under imminent risk, an unwarranted side-effect of sanctions", largely because the country is not allowed to use the international payment systems, having been, for example, disconnected from the SWIFT system as a result of sanctions (Sonia Maria P. Pinto Soares, "UN sanctions that safeguard, undermine, or both, human rights", in *Making Sovereign Financing and Human Rights Work*, Juan Pablo Bohoslavsky and Jernej Letnar Cernic, eds., (Oxford, Hart Publishing, 2014), pp. 33-46, see especially pp. 38-40). For an example of unilateral coercive measures no longer enforced (Burundi), see E/CN.4/Sub.2/2000/33, paras. 79 and 82.

[49] See E/C.12/2000/4, para. 41.

[50] See John Tobin, *The Right to Health in International Law* (Oxford, Oxford University Press, 2012), p. 332.

[51] See A/59/422, para. 33.

[52] See John Tobin, footnote 50 above, pp. 332 and 333.

essential drugs as from time to time defined under the WHO Action Programme on Essential Drugs; and the equitable distribution of all health facilities, goods and services.[53]

## F. Right to education

45. The Committee on Economic, Social and Cultural Rights has noted, in its general comment No. 8, that economic sanctions may severely interfere with the functioning of the education system,[54] thus having an impact on the right to education, as guaranteed in article 13 of the Covenant on Economic, Social and Cultural Rights.

46. The actual effects of the embargo on Iraq on the enjoyment of the right to education have been documented.[55] Although this concerned a case of multilateral sanctions, lessons may be learned on potential similar effects in cases of implementation of unilateral coercive measures. As an example, mention may be made of the decrease of access of Iranian women to higher education as a consequence of economic sanctions, noted in a recent report issued by the Advisory Committee of the Human Rights Council.[56]

## G. Other rights potentially affected by unilateral coercive measures

47. The potential or actual adverse impact of unilateral coercive measures on the enjoyment of other rights and freedoms, including, but not limited to, the freedom of movement, the right to seek asylum, the right to privacy and reputation, family rights, the rights to access to court, to a fair trial and to an effective remedy, property rights and so forth, will deserve further investigation at a later stage.

# IV. Preliminary recommendations

48. The present section addresses a series of three questions: how to assess the impact of unilateral coercive measures on human rights, how to mitigate the adverse impact of unilateral coercive measures on the enjoyment of human rights and how to ensure legal due process to prevent, and provide redress and remedy for, the adverse human rights outcomes of unilateral coercive measures.

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[53] To borrow the words used by Erika De Wet (see footnote 12 above), in which she underlined the obligations imposed on States under the right to health as to the design and implementation of embargoes enacted by the United Nations Security Council.

[54] See E/C.12/1997/8, para. 3. See also Klaus D. Beiter, *The Protection of the Right to Education by International Law* (Leiden, Martinus Nijhoff Publishers, 2006), especially at p. 367.

[55] See S/1999/356, annex II, para. 22.

[56] See the preliminary research-based report on human rights and unilateral coercive measures (A/HRC/AC/13/CRP.2), para. 29.

## A. How to assess the impact of unilateral coercive measures on human rights

49. The first obstacle to a global evaluation of unilateral coercive measures is the unavailability of global and standardized updated data pertaining thereto. Full transparency in this regard would be helpful both to the United Nations and to international business corporations in particular of the source/sender or allied countries. To the United Nations organs, such data would provide a complete background of unilateral coercive measures in force when deciding on the appropriateness and nature of possible sanctions that might usefully be mandated by the Security Council itself or on the review of existing Council sanctions. To the international business community, these data could provide greater transparency to enhance predictability for their trade, investment and finance transactions involving several dozens of targeted States in which areas of economic activity either remain unaffected by "smart" unilateral coercive measures or open up following the progressive lifting of unilateral coercive measures. Admittedly, some information can already be obtained from the individual sender country's official Internet sites and service providers through commercial subscriptions but their reliability and comprehensiveness are not ensured and their access can be problematic, as this mandate has found in its own research work. Available information on a sender-country basis suggests that there are currently 37 targets of unilateral coercive measures for the European Union,[57] 32 for the United States,[58] and 25 for Canada.[59] There is much duplication between sanctions and unilateral coercive measures, on the one hand, and between unilateral coercive measures of different source/sender countries or groups of countries, on the other.

50. As part of these target-country sanctions or under other thematic headings such as "terrorist groups" or "Al-Qaida", several thousand individuals and entities are also blacklisted in national consolidated unilateral coercive measures lists. For example, Australia has close to 1,000 autonomously designated "individuals" and "entities" 'of concern", of total entries of 5,340, the rest being listed pursuant to Security Council resolutions.[60] It seems that in the case of the United States and the European Union, autonomously designated individuals and entities are substantially more numerous than those listed pursuant to a Security Council resolution, but this needs to be verified when the information becomes readily accessible.

51. The second obstacle to assessing the true impact of unilateral coercive measures on human rights flows from the political nature of unilateral coercive measures.

52. Sender/source countries may be concerned primarily with the necessity of ensuring the effectiveness of unilateral coercive measures before predetermining the likely impact of such measures on human rights. This often may be because their Governments must be seen by their domestic opinion to respond rapidly and

[57] See http://eeas.europa.eu/cfsp/sanctions/docs/measures_en.pdf.

[58] See www.treasury.gov/resource-center/sanctions/Programs/Pages/Programs.aspx.

[59] See the list of current sanctions imposed by Canada, on the website of the Department of Foreign Affairs, Trade and Development of Canada. Available from www.international.gc.ca/sanctions/countries-pays/index.aspx?lang=eng.

[60] Australian Department of Foreign Affairs and Trade, "Australia and sanctions: consolidated list", 7 August 2015. Available from http://dfat.gov.au/international-relations/security/sanctions/Pages/consolidated-list.aspx.

appropriately to headline crisis situations abroad. The efficiency of unilateral coercive measures may thus take precedence over caution on their impact on human rights.

53. Target countries for their part will tend to overplay the adverse impact of unilateral coercive measures on the human rights of their population even if this may mean at times confounding causality, correlation and contiguity in time. Unilateral coercive measures, especially if triggered by human rights concerns, are often designed to create dissension between a particular political regime that is targeted and the people of the country. The predictable reaction of the targeted regime is to promote a "rally-round-the-flag" response based on a dramatization of the human rights sufferings brought on by the said unilateral coercive measures. More generally, however, developing countries, whether in the Movement of Non-Aligned Countries or the Group of 77 and China, have consistently challenged the very legitimacy of unilateral coercive measures. They in particular denounce these measures as disregarding their sovereignty and as constituting interference in their domestic affairs.[61]

54. A candid assessment of the true impact on human rights is made all the more challenging by the fact that unilateral coercive measures are usually imposed in a context of complex emergency in which several sender countries of unilateral coercive measures and the Security Council may all be acting simultaneously or successively. Thus, responding to a request for information by the Secretary-General, the Syrian Arab Republic indicated that "more than 58 packages of unilateral coercive measures target(ed) all areas of economic, financial agricultural and industrial activity and the food, pharmaceutical, tourism transport science and culture sectors. Each set of sanctions includes several subsets so that the real number of sanctions is far higher than 58 with major implications for the scale of suffering of the Syrian people".[62]

55. It may be very difficult in such cases to disentangle the causality link and to ascribe a particular adverse impact to one of the measures cited above rather than to the other. Useful work has been done to develop proxy indicators to estimate the adverse impact of sanctions and of unilateral coercive measures on human rights. Their effectiveness is related to the methodology utilized. Thus, an ex ante survey based on such indicators followed by a regular monitoring of their evolution has been found useful. Many United Nations system agencies and in particular the United Nations Children's Fund (UNICEF), as well as the European Union, have developed useful parameters in this regard. However, there is no cookie-cutter approach to assessing the impact on human rights, as situations in this regard vary from one case to another.

56. It is recommended that:

(a) A consolidated central register be set up at the level of the Security Council or of the United Nations Secretariat to recapitulate the list of all unilateral coercive measures in force. This register, which would be updated regularly, would

[61] Such was the position taken by the First South Summit, held in Havana in 2002; the Second South Summit, held in Doha in 2005; the sixteenth Summit of the Movement of Non-Aligned Countries, held in Tehran in 2012; and the Summit of Heads of States and Governments of the Group of 77 and China, convened in Santa Cruz, Plurinational State of Bolivia, in 2014.

[62] See the report of the Secretary-General on human rights and unilateral coercive measures (A/67/181), pp. 11-12.

be kept according to the standards currently applied for Council sanctions and would be made public. Sender/source States or group of States would be invited to notify the Council of unilateral coercive measures in force at their initiative and of their evolution;

(b) Best practice defined in terms of drawing up a reasonable toolbox to support judgement (and not to replace it) be resorted to as a guide with respect to assessing the impact on human rights;

(c) Specialists from OHCHR, the United Nations Development Programme, UNICEF, the European Union and another major sender State of unilateral coercive measures as well as from two major targeted countries meet under the auspices of OHCHR to delineate the possible elements of the toolbox.

## B. How to mitigate the adverse consequences of unilateral coercive measures on human rights

57. There has been a broad realization, following the tragedy of Iraq in the 1990s in particular, that something must be done to mitigate the adverse impact of sanctions as well as unilateral coercive measures on human rights. Of course, the best option for mitigation would be to respond positively to the solemn call of the many summits of the Movement of Non-Aligned Countries, the South and the Group of 77 and China upon developed countries to phase out the resort to at least unilateral coercive measures, if not to sanctions, and to move towards their ultimate elimination.

58. Although this may appear to be an unrealistic prospect, in the light of the current expansion of the use of unilateral coercive measures, it remains a legitimate objective to which to aspire. After all, the countries of Western Europe and of the former Eastern European bloc set a path-breaking precedent in this respect. That was at the Conference of on Security and Cooperation in Europe, held in Helsinki in 1975. In the Final Act of that momentous event, the signatory States proclaimed the principle of non-intervention of States in the international affairs of others. In the Declaration on Principles Guiding Relations between Participating States under the heading "Non-intervention in internal affairs", they committed themselves in all circumstances to refrain from any other act of military or of political, economic or other coercion designed to subordinate to their own interest the exercise by any other participating State of the rights inherent in its sovereignty and thus to secure advantages of any kind.

59. It is interesting to note that in this document, all signatory States indirectly recognized that unilateral coercive measures constitute an intervention in the internal affairs of others. They agreed to ban such intervention in their mutual relations. The evolution on the ground between the participating States put an end thereafter to the promises of the Final Act. The agreement reached does show, however, that banning unilateral coercive measures, if confidence is restored and basic values are shared, is not such an outlandish hope for the international community.

60. The theme of mitigating the adverse impact of unilateral coercive measures on human rights has not been the subject of extensive debate.

61. With respect to target-country processes, the main progress achieved has consisted in the fact that the United Nations and several sender countries have renounced the resort to comprehensive sanctions. The Security Council last imposed such sanctions in the case of Haiti in 1994. The European Union has proceeded likewise. A few sender/source countries have yet to take similar decisions and may consider that the breakthrough achieved with the Islamic Republic of Iran is not unrelated to the de facto comprehensive nature of the sanctions that were applied in the context of nuclear non-proliferation. Here again, there is a need to caution against confusing correlation with causality, as several factors contributed to the economic pressure on the Islamic Republic of Iran, not least the drop in world prices of oil, for which it had found alternative markets following the Western countries' ban on oil exports.

62. It is recommended that all sender/source countries of unilateral coercive measures join in forsaking the resort to comprehensive sanctions in view of their far-reaching adverse impact of the human rights of innocent civilian populations.

63. While, as has been mentioned, many sources have given up the resort to comprehensive unilateral coercive measures, some target countries have been exposed to the equivalent of comprehensive sanctions through the superimposition of a wide range of multiple and diverse targeted measures. Such was the case for Myanmar and is still the case for the Syrian Arab Republic, the Sudan or the Islamic Republic of Iran, to cite some significant examples.

64. It is recommended that:

(a) Sender/source countries consolidate all sanctions and unilateral coercive measures in a single, integrated framework to avoid unintended adverse consequences on the human rights of civilian populations;

(b) Sender countries recognize the possible adverse impact of their unilateral coercive measures on human rights in third countries and consult with the former to mitigate this impact;

(c) Sender countries consider reviewing their claim to extraterritorial jurisdiction, making their unilateral coercive measures mandatory on third countries.

65. In the 2005 World Summit Outcome, world leaders emphasized the necessity of ensuring that "fair and clear procedures exist ... for granting humanitarian exemptions". However, Myanmar and Belarus were exposed to unilateral coercive measures accompanied by a prohibition of articles of humanitarian aid. While the level of development of Belarus limited the impact of this prohibition on the right to life of the population, the circumstances of Myanmar, a least developed country that at the time was enduring the cyclone Nargis, were such as to entail huge sufferings on the population.

66. It is recommended that all sender/source States desist from applying a prohibition of articles of humanitarian aid first to least developed and ultimately to all target countries.

67. The principles invoked by unilateral coercive measures motivated by human rights concerns have at times been weak. One could refer, for example, to the principle of upholding democracy and human rights. In Zimbabwe in 2002 and in Myanmar in 2003, unilateral coercive measures were imposed on the grounds that

there was a refusal in one case to organize a parliamentary election or in the other case to recognize the outcome of the ballot. Yet democratic parliamentary elections were organized in 2006 in Gaza that gave a clear majority to Hamas. Unilateral coercive measures in this case were imposed where the election was democratic and transparent, but where the "wrong" party won the contest. The resulting interruption of aid caused a humanitarian crisis in the territory.

68. It is recommended that when unilateral coercive measures must be imposed, special attention be given more to the consistency of the supporting principles and less to short-term interests.

69. The European Union has adopted a sophisticated procedure for resorting to unilateral coercive measures (referred to as "restrictive measures"). There is also political convergence at the Council of Ministers, a convergence that does not necessarily exist in the Security Council. The argument given by States or groups of States such as the European Union for adding unilateral coercive measures to compound the sanctions of the Security Council is that the threat of the veto procedure in the Council because of structural political divisions prevents them from framing adequate sanctions. They therefore claim to have to reinforce these through "autonomous" measures. Despite the fact that this political rift does not apply to decisions of the European Union, some of its member States, after having adopted by consensus European Union-based unilateral coercive measures against a given target, then decide to apply against the same target additional unilateral coercive measures of their own.[63]

70. It is recommended that once "autonomous" restrictive measures are applied by a regional group of allied States such as the European Union, its member States refrain from adding national unilateral coercive measures of their own, on top of those of their regional group, against the same country.

71. The dearth of information concerning unilateral coercive measures mentioned earlier is also felt concerning the procedures in place at the level of individual sender States to enquire as to whether any update is required in national policies in the light of the remarkable progress that has occurred both at the level of the Security Council[64] and at the level of the European Union. Increased flexibility and transparency, clearer criteria for imposing and lifting unilateral coercive measures, and greater concern for human rights and the rule of law are some of the features of these reforms.

72. It is suggested that individual sender/source States review best practices in this regard with a view to introducing these, where possible, in their own policies.

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[63] With respect to unilateral coercive measures adopted against Myanmar, the United Kingdom House of Lords' Select Committee on Economic Affairs, in its second report of the Session 2006-2007 (*The impact of Economic Sanctions, Volume I: Report*, para. 51), has mentioned that "[w]hile the UK measures [against Myanmar] are presented as being in support of the EU Common Position, in practice they go well beyond the letter of the Common Position and exceed the measures taken by many other EU countries, including France, Germany, Spain, Austria and Italy".

[64] See Sue Eckert and Thomas J. Biersteker, *Due Process and Targeted Sanctions: An up-date of the Watson Report* (Geneva, Watson Institute for International Studies/Graduate Institute, 2012).

## C. How to ensure due legal process to prevent, and provide redress and remedy for, the adverse human rights outcomes of unilateral coercive measures

73. The imposition of unilateral coercive measures, whether comprehensive or "smart", on target States is the outcome of an international political option of last resort that always carries in its wake high costs in terms of forfeiture of human rights, even if it is motivated by objectives for enhancing human rights. When one moves from targeting States to targeting commercial entities or individuals, no country where the rule of law prevails can ignore due legal process. For respecting the right of every person to a fair court hearing and trial is the very essence of democracy.

74. It has been argued that persons "of concern" cannot be dealt with in compliance with criminal or civil law as they are subjected to coercive measures (denial of visas, freeze of assets, arrests, etc.) that are temporary and reversible, for political reasons and for preventive purposes, that is, to prevent them from acting in a way that could jeopardize security writ large. The answer to this argument is, of course, that the fight against terrorism will be lost if terrorists succeed in undermining basic human rights principles in States where they are otherwise complied with. As the United States authorities have demonstrated leadership in deciding to close Guantanamo, the international community would be ill inspired to re-create a virtual Guantanamo to deal with the listing and delisting of persons on a blacklist without giving them the right to a fair trial.

75. The Security Council has considerably increased the powers of the Ombudsperson to investigate challenges to blacklisting through its resolution 1989 (2011), giving her quasi-judicial decision-making authority by providing that her decision to delist a person becomes effective if it is not overturned by the unanimous vote of the relevant Committee of the Council[65] and in this case by the Council itself. As for the European Union, an increasing number of its decisions, whether pursuant to a Security Council resolution or as unilateral coercive measures, have been challenged in the European Court of Justice. As mentioned above,[66] the cases of 290 individuals were being appealed in February 2014. Past records show that an appreciable proportion of such appeals have been successful, leading to the delisting of the claimant who, however, is at times relisted under another heading by the Council of Ministers of the European Union. Such was the case of a designated person of Somali and Swedish nationality who was delisted from the list of United Nations sanctions pursuant to resolutions 1267 (1999) and 1989 (2011) by the Ombudsperson and relisted the same day by the Security Council in the sanctions list pursuant to resolution 1844 (2009) concerning Somalia.[67] Some decisions of the European Court of Justice were countered in the same way. This surprising practice is explained for another case of unilateral

[65] Security Council Committee pursuant to resolutions 1267 (1999) and 1989 (2011) concerning Al-Qaida and associated individuals and entities.

[66] See footnote 4 above.

[67] Ali Ahmed Jumale (aka Ji'male) was included on the Somalia sanctions list after being removed from the Al-Qaida list at the request of the Ombudsperson of the sanctions regime pursuant to resolutions 1267 (1999) and 1898 (2011), and the delisting and listing happened on the same day. See the press statement of 21 February 2012. Available from www.un.org/press/en/2012/sc10549.doc.htm.

coercive measure targeting an Iranian bank as follows by the United Kingdom Foreign and Commonwealth Office:

> The loss of Court cases is concerning. I remain convinced that in the overwhelming majority of cases, the original listings were fully justified and proportionate to the objectives of the sanctions regime. It is for that reason that we and other member States moved immediately to restore under amended criteria the listings of Iranian banks that had been set aside by the Court.[68]

76. It is recommended that:

(a) Either the European Union policy of recognizing the power of the courts to annul the blacklisting of entities or individuals or at least the policy of the Security Council with respect to its resolutions 1267 (1999) and 1989 (2011), to apply a quasi-judicial procedure be considered by other source/sender countries in their own policies on unilateral coercive measures as regards the blacklisting of entities and individuals. This they could do as an expression of their commitment to the rule of law and to the right of every individual to a fair trial. This is no easy task and will require that a solution be found to address the problem of sensitivity of sources and of their confidentiality, which are an essential part of policies to defeat terrorism through intelligence. An interesting solution was found for the Ombudsman under resolutions 1267 (1999) and 1989 (2011), whereby this person is made privy to such confidential information but is not mandated to refer to it explicitly;

(b) Allies who are members of a regional group consider refraining from outbidding individually the collective measures against a target in whose adoption by consensus they participated;

(c) The Security Council use more frequently its option to indicate to Member States whether its sanctions are self-contained and call only for implementation by States Members of the United Nations or whether they can be further complemented and reinforced on a voluntary basis through regional or national initiatives in the form of complementary unilateral coercive measures. At the very least, Member States could be invited not to refer to their unilateral coercive measures as "complementary to Security Council sanctions" unless the Council so determines.

## V. Projected activities

77. Further to the projected activities included in his report to the Human Rights Council,[69] the Special Rapporteur will continue to gather information from relevant stakeholders, who are encouraged to submit the required information by the end of the year so that it can be analysed in future reports. He encourages in particular international and national non-governmental organizations to take added interest in documenting and assessing unilateral coercive measures worldwide.

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[68] See footnote 4 above. For a fuller statement of the practice of the European Union Council of Ministers to relist immediately for different reasons entities or persons who benefited from an annulment of their initial blacklisting, see "Who are you calling a rogue?", *The Economist*, 20 June 2015, p. 61.

[69] A/HRC/30/45, paras. 45-58.

78. The Special Rapporteur will also undertake a broad-based fact-finding approach towards all stakeholders, and in this regard he wishes to encourage Governments to respond positively to his request for country visits.[70]

79. Concerning the drafting of guidelines and formulation of recommendations, the Special Rapporteur is envisaging organizing in 2016 an expert consultation for the elaboration of draft guidelines on ways and means to prevent, minimize and redress the adverse impact of unilateral coercive measures on human rights.

# VI. Conclusion

80. **One might observe that, confronted with the hard power of unilateral coercive measures, the soft law of some 30 resolutions of the General Assembly, the United Nations Conference on Trade and Development and many major United Nations international conferences, in which States are strongly urged to refrain from promulgating and applying unilateral coercive measures, has been of little avail. This emerging customary law indeed has not prevented or reversed the upward trend in the use of such coercive measures. But it has provided pressure for qualitative reform in the procedures pertaining to unilateral coercive measures.**

81. **There remains a need to exert additional effort in defining ex ante strategic options to be pursued by unilateral coercive measures and exit strategies, as well as to continue seeking to better reduce the adverse impact of unilateral coercive measures on human rights. Concern about such impact should be placed at the centre of future strategies on unilateral coercive measures and in particular for those that purport to react to human right violations in a targeted country. For appeals against decisions on blacklisting, the main challenge for States outside the European Union is to see how "designated persons" can be given the possibility of seeking redress for the possible miscarriage of executive decisions.**

82. **It should be remembered that unilateral coercive measures resorted to alone are likely to have a high cost in terms of the human rights of innocent people in targeted countries and a low degree of efficiency in achieving the desired objective. The complement, or the alternative, to such measures is engagement. This is the principal message of the successful non-proliferation negotiations between the five permanent members of the Security Council plus Germany and the Islamic Republic of Iran. The leadership exercised by the President of the United States in this regard and in calling into question the unilateral coercive measures against Cuba sets a favourable background for the work of this mandate and for the ultimate elimination of unilateral coercive measures as a poor proxy for negotiation in international relations.**

[70] The Special Rapporteur has requested to visit Cuba, the Islamic Republic of Iran and the United States.